

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

Malpractice; Sufficiency of Evidence; Qualifications of Physician Testifying as Expert Witness

A recent decision of the California District Court of Appeal, First Appellate District, *Pierce v. Paterson*, 50 A.C.A. 606, presents in a malpractice action two questions of some interest to physicians and surgeons, namely, (1) what evidence is sufficient to require the presentation of a malpractice case to the jury for decision, and (2) what qualifications must a physician possess in order to be competent to testify as an expert witness in such an action.

The case of *Pierce v. Paterson* involved an appeal from an order granting a new trial after judgment for the defendant in a malpractice action against a physician. The plaintiff in the action contended that her son had died as the result of the defendant's negligent treatment of a finger injured in a home accident, the son having caught his finger in the door of the bathroom, severely injuring it. In answer to the call of plaintiff, the defendant treated the wound by lifting the injured nail, squeezing tincture of merthiolate underneath it, and then packing the finger in metanac jelly and bandaging it. This treatment in substantially the same manner was continued for several days, when the boy developed symptoms of a tetanus infection. The patient, on advice of another physician, was taken to the Alameda County Hospital where an antitoxin was immediately administered. The boy failed to respond to the treatment, and died the next day as a result of the infection.

After hearing the testimony on both sides, the case was submitted to the jury and a verdict was returned for the defendant. On motion of the plaintiff, the trial court granted a new trial, and on appeal from this order granting a new trial, it was necessary for the Appellate Court to pass upon the sufficiency of the evidence which the plaintiff must adduce before he is entitled to have the specific issue, of whether defendant's negligence has resulted in injury, presented to the jury, and also to pass upon the qualifications of the witness, Dr. Ruedy, who testified on behalf of the plaintiff.

The court reiterated the well-established rules of law that a physician and surgeon, in undertaking the treatment of a patient, cannot be held to guaranty the results of his treatment, but that he is bound to possess the degree of skill and learning ordinarily and usually possessed by physicians and surgeons practicing in the same locality, and is also bound to use reasonable and ordinary care and skill in administering medical and surgical treatment to the patient. On trial of the case, it was plaintiff's contention that the defendant physician had failed to use reasonable and ordinary skill in caring for the injured finger and, as a result of such failure, the boy had died. More particularly, plaintiff contended that the defendant had failed to use ordinary and reasonable care and skill, in that he had not properly cleansed and sterilized the wound, nor had he administered tetanus antitoxin. In support of this contention, the plaintiff presented the testimony of Dr. Ruedy, a physician practicing in Alameda County, as an expert witness. (For a more complete consideration of the requisite qualifications of an expert witness in a malpractice action, see the Medical

Jurisprudence article in the December, 1941, issue of CALIFORNIA AND WESTERN MEDICINE, where a California case was examined in which this same physician had testified on behalf of the plaintiff.) In the words of the Court:

"Dr. Ruedy, a physician and surgeon called by the plaintiff, testified that under the circumstances of the case 'the use of reasonable medical care and skill by the attending physician demanded a thorough cleaning of the sutured finger and to give the finger free access to the air to overcome any anaerobic tetanic germs'."

The Court said that where the evidence presented tends to show that the alleged negligence resulted in an infection producing death, it presents a case for the jury. Further, the Court held that from the "expert testimony" set forth above, it could be reasonably inferred that the infection resulting in the boy's death, would not have occurred if the wound had been properly cleaned and antiseptized. A new trial was granted after the decision of the Court in favor of the defendant because the trial judge, in his instructions to the jury, had limited the question of negligence to the failure of the defendant to administer tetanus antitoxin, and had precluded any consideration of the physician's alleged failure to sterilize.

The defendant had urged at the trial objections to the competency of the physician called by the plaintiff to testify as an expert witness on the question of what treatment a physician practicing in the locality would have administered in the exercise of reasonable medical care. The usual requirement is that the physician testifying be acquainted and familiar with the standards of care and skill ordinarily used and possessed in the locality in which the alleged malpractice has occurred, and that he be familiar with the usual methods of treating the particular injury or illness involved. The plaintiff's witness testified that he possessed this knowledge; and since his educational record and past experience so indicated the defendant physician could interpose no valid objection as to competency.

This case of *Pierce v. Paterson* again illustrates the importance of the expert testimony introduced by the plaintiff in a malpractice action. The testimony of the one physician called by the plaintiff was a very substantial factor in bringing about a decision against the defendant on this appeal from the order granting a new trial.

LETTERS †

Concerning Narcotic Regulations for Physicians Entering Military Service.

June 23, 1942.

George H. Kress, M.D.,
Editor, California and Western Medicine,
San Francisco, California.
Dear Doctor:

For your information and for the information of all physicians entering various branches of the military service, the Collector of Internal Revenue and the State Division of Narcotics Control advise that the following is the correct procedure to be adopted by all physicians entering military service with respect to their narcotic prescription books.

The office of the Collector of Internal Revenue advises that all physicians entering military service who are discontinuing private practice should report this

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

fact to the Collector of Internal Revenue and, if possible, should indicate what branch of the service they are entering and the time of entry. Communications containing this information should be addressed by the physician in the Northern California area to:

Collector of Internal Revenue,
Attention: Narcotics Division,
Federal Office Building,
San Francisco, California.

Physicians in the Southern California area should address such communications to:

Collector of Internal Revenue,
Attention: Narcotics Division,
Tenth Floor,
New Federal Office Building,
Los Angeles, California.

On receipt of such information, the Narcotics Division of the office of the Collector of Internal Revenue will place the physician on what is termed an "inactive list" for the duration of his military service. If the Narcotics Division is not so informed, physicians will be placed on the "delinquent list" and, it is stated, will encounter difficulty with the office of the Collector of Internal Revenue upon their discharge from military service.

The State Division of Narcotics Control advises that physicians should keep their narcotic prescription books in some safe depository with their other records. The books should not be sent back to the Division of Narcotics Control by the physician entering military service but should be kept for future use upon discharge from the armed forces.

Very truly yours,

HARTLEY F. PEART.

Concerning California Law Applicable to Persons Practicing Medicine Without a License.

(COPY)

Los Angeles, Calif., July 21, 1942.

Re: Peo. vs. Earle Musgrave—No. 12692 (misdemeanor).
Dear Dr. Pinkham:

The above entitled case was called for trial July 20, 1942, in Division 7, Municipal Court, City of Los Angeles, where defendant waived trial by jury, and case was transferred to Division 8 for court trial before Judge LeRoy Dawson. Defendant was found guilty, applied for probation and case was set for hearing on application for probation, and for sentence in Division 8, August 3, 2 p.m.

At the conclusion of this trial, Judge LeRoy Dawson made the following comment:

"It is one of the most unfortunate situations we have in this State, wherein a person found guilty of practicing medicine without a license, endangering the lives of human beings, cannot be charged with anything but a misdemeanor. It is shameful that a person who violates these provisions of the medical laws cannot be adjudged guilty of a felony and given more severe punishment when the situation is an aggravated one, but our State Legislature has adjudged it to be a misdemeanor."

Yours very truly,

BOARD OF MEDICAL EXAMINERS,
S. W. BROOKS, *Assistant Special Agent.*

Concerning Dangers Connected with Home Canning.

State of California

DEPARTMENT OF PUBLIC HEALTH
612 Phelan Building, San Francisco

July 22, 1942.

To the Editor:—With the increase in home canning, it is anticipated that there will be many deaths due to botulism in California this year unless an extensive educational campaign is conducted. Your assistance in this program is requested.

Enclosed is a copy of a circular letter which we are sending to the County Medical Societies, together with the leaflet entitled, *If You Eat Home-Canned Foods, Read This*—We are eager to obtain wide distribution for this leaflet, and would appreciate your aid in any way possible. Additional copies in any quantity you desire will be supplied by this office.

We also wish to thank you for sending us the addresses of the County Medical Societies.

Very truly yours,

(Signed) MILTON P. DUFFY,
Chief, Bureau Food and Drug Inspections.

(COPY)

To County Medical Societies, addressed:

With the increase in home canning, it is anticipated that there will be many deaths due to botulism in California this year unless an extensive educational campaign is conducted. Your assistance in this program is requested.

Enclosed is a copy of a leaflet, entitled, *If You Eat Home-Canned Foods, Read This*—Additional copies in any quantity you desire will be supplied from this office. Will you undertake to give this leaflet wide distribution throughout the district under your jurisdiction? 612 Phelan Building.

Very truly yours,

(Signed) MILTON P. DUFFY,
Chief, Bureau Food and Drug Inspections.

Concerning a Training Course for Practical Nurses.

SAN FRANCISCO COMMITTEE FOR SERVICE TO EMIGRÉS
(Federation of Jewish Charities)

1600 Scott Street

San Francisco, Calif., July 3, 1942.

To the Editor:—We are enclosing an outline of the Training Course for Practical Nurses.

Very truly yours,

SAN FRANCISCO COMMITTEE FOR
SERVICE TO EMIGRÉS,
SANFORD TREGUBOFF, *Secretary.*

A short and intensive Training Course for Practical Nurses is now in progress under the sponsorship of the San Francisco Committee for Service to Emigrés. The instructor is Mrs. Alfred Heuermann, former Assistant Superintendent of Nurses at the Johns Hopkins Hospital.

There are 20 women enrolled, most of whom have had previous nursing experience in Europe. The main object of the course is to familiarize the students with American methods of simple home nursing. The women will be qualified to go into homes where the patients require bed care but where it is not necessary to have the services of a graduate nurse.

The course started on June 16, 1942, in the Mt. Zion Hospital Nurses Home and will be completed on July 15, 1942. The services of these women may be procured through the employment department of the San Francisco Committee for Service to Emigrés, 1600 Scott Street, telephone FI 4513.